

WORLD FINANCIAL NETWORK NATIONAL BANK

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Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

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Re: Docket No. R-1286; Comments on Proposed Rules to Amend Regulation Z, Which Implements the Truth in Lending Act.

Ladies and Gentleman:

World Financial Network National Bank (WFNNB) has over 85 private label and co-brand credit card programs; representing almost 105 million cardholders and \$3.8 billion of managed receivables. Our clients are predominately specialty retailers. We are pleased to submit the following comments in response to the agency's request published in the May 19, 2008 Federal Register.

WFNNB would first like to express its concern that the proposed changes (to these currently authorized practices) could subject industry as a whole to potential lawsuits for past practices, which under the Regulation Z and Regulation AA proposals, would now be deemed "unreasonable" or "deceptive". Because of this potential risk, we ask the Board of Governors of the Federal Reserve System (Board) to clarify that there be a bar on retroactive causes of action based on changes to these Regulations as a result of the proposed rules.

There are several specific areas in the proposed rules on which WFNNB would like to comment:

1. Changes in Consumer's Interest Rate and Other Account Terms. The June 2007 Proposal required that when a change-in-terms notice accompanies a periodic statement, creditors provide a tabular disclosure on the front of the periodic statement of the key terms being changed. Consistent with the 2008 Regulation AA Proposal that restricts creditors' ability to apply increased rates to certain existing balances; creditors would be required to clarify how existing or new balances would be affected by any rate increase.

Comment: There are several areas within this proposed change and the companion proposal in Regulation AA in which WFNNB would like to comment:

- A. The inability to increase the interest rate for existing balances could cause system and disclosure issues related to balance calculations on periodic statements. For revolving consumers, if interest rates are changed periodically (via a change-in-terms), over time it could be possible for there to be several different balance calculations on their periodic statements. This could cause system issues regarding the number of simultaneous balance calculations that can be performed on an account and statement issues related to disclosing how each “portion” of the balance is calculated. Further, the statements (with multiple balance calculations) could be difficult for the consumer to read and understand;
 - B. WFNNB believes there should be an exception to the proposed rule for newly acquired portfolios. The inability to re-price accounts could lead to a chilling effect in acquiring existing portfolios and could also effect securitization. Distressed sellers could have difficulties in finding buyers for portfolios that are priced below current market rates due to the inability of any buyer to re-price existing balances upon acquisition via a change-in-terms. This would be detrimental to consumers as avenues for available credit may diminish because distressed sellers could simply discontinue their credit card programs as an alternative to selling them;
 - C. Issuers may charge a higher interest rate to consumers at the outset of an account because of the inability to raise rates (and have them apply to existing balances) at a later date;
 - D. The inability to re-price existing balances could harm consumers as issuers may seek to make up this lost revenue by raising the risk cutoff on their portfolios, further inhibiting marginal credit risk consumers from acquiring financing alternatives. In addition, issuers would be forced to consider increasing other rates and fees or decreasing cardmember benefits, such as rewards programs.
2. **Crediting Payments.** Currently, creditors may require consumers to comply with reasonable payment instructions, including a cut-off hour for receiving payments. The May 2008 Proposal deems a cut-off hour for mailed payments before 5 p.m. on the due date to be an unreasonable instruction. Creditors that set due dates on a weekend or holiday but do not accept mailed payments on those days would not be able to consider a payment received on the next business day as late for any reason.

Comment: WFNNB does not believe that a cut-off hour for mailed payments before 5 p.m. should be deemed unreasonable and likens this scenario to that of the Uniform Commercial Code (UCC) Section 4-108 **Time**

of Receipts. Under this section (and the corresponding state versions) banks may fix a cut-off hour as early as 2 p.m. local time (1 p.m. under South Carolina law) in which it may treat an item or deposit of money received after that time as being received at the opening of the next banking day. WFNNB believes that the payment cut-off hour for mailed credit card payments should be consistent with the UCC standard of 2 p.m. local time for the state in which payments are received.

The official commentary to UCC 4-108 provides additional insight as to the reasoning behind establishing a payment cut-off hour of 2 p.m.:

“Each of the huge volume of checks processed each day must go through a series of accounting procedures that consume time. Many banks have found it necessary to establish a cutoff hour to allow time for these procedures to be completed within the time limits imposed by article 4. Subsection (a) approves a cutoff hour of this type provided it is not earlier than 2 p.m. Subsection (b) provides that if such a cutoff hour is fixed, items received after the cutoff hour may be treated as being received at the opening of the next banking day...”

WFNNB believes this commentary to be sound and that the same rationale should be applied to the proposed rule.

Is the Board suggesting by this proposal that the 2 p.m. cut-off time allowed under UCC 4-108 for bank deposits be deemed “unreasonable”? If not, how does it address the inconsistent standards set out in the UCC and the proposed rule?

The establishment of a 5 p.m. local time mailed payment cut-off would not allow sufficient time for issuers to perform all of the tasks associated with processing these payments and still be able to get them into the banking system for processing the same day.

3. **Grace period labels.** The June 2007 proposed requirement to use the term “grace period” as a heading in the summary table provided at application (and elsewhere such as at account opening or with checks that access credit card accounts) would be eliminated. The phrase “how to avoid interest” (or “paying interest” if no grace period exists) or substantially similar terminology would be required instead.

Comment: WFNNB makes no comment as to the ease of consumer understanding of the phrase “how to avoid interest” versus “grace period”, however, it does ask the Board to acknowledge that the destruction, printing and distribution of new credit card applications, cardmember agreements and other documents, which currently reference “grace period” involves significant costs, operational planning and execution. We believe the Board should provide an extended period for industry to comply with the proposed change. During this period, issuers would replace collateral with updated

documents (utilizing the phrase “how to avoid interest”) as existing stock is depleted. This would reduce the cost and operational issues associated with destroying and replacing existing credit card collateral.

4. Investigating Claims of Unauthorized Transactions or Allegations of Billing Errors. Currently, creditors must conduct a reasonable investigation before imposing liability for an unauthorized transaction, and may reasonably request a consumer’s cooperation. The May 2008 Proposal clarifies that a creditor may not, however, deny a claim solely if the consumer does not comply with a request to sign a written affidavit or file a police report, and for consistency extends guidance for reasonably investigating claims of unauthorized transactions to allegations of billing errors.

Comment: As mentioned, section 226.12(b) already contains a “reasonable investigation” standard for unauthorized use. WFNNB urges the Board to keep the proposal for section 226.13 consistent with the already established standard.

5. Advertising Provisions. For deferred interest plans that advertise “no interest” or similar terms, the May 2008 Proposal would add notice and proximity requirements to require advertisements to state the circumstances under which interest is charged from the date of purchase and, if applicable, that the minimum payments required will not pay off the balance in full by the end of the deferral period. Model clauses are proposed to ease compliance.

Comment: WFNNB would urge the Board to remain consistent with the long standing Federal Trade Commission (FTC) Guide Concerning Use of the Word “Free” and Similar Representations. Particularly Section 2 (c) Disclosure of Conditions:

“(c) Disclosure of conditions. When making “Free” or similar offers all the terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of “Free” merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a “Free” offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered “Free”, (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no

purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.”

<http://www.ftc.gov/bcp/guides/free.htm>

6. Foreign transaction fees. The May 2008 Proposal would require issuers to disclose fees for purchase transactions in a foreign currency or conducted outside the United States in the table provided at application or solicitation. The June 2007 Proposal required creditors to disclose these fees in the summary table provided at account-opening but not in the table provided at application or solicitation.

Comment: WFNNB would ask the Board to clarify that the fees they seek disclosure of are those of the institution that *issues* the credit card and not of the processing bank (or any other non-affiliated third party), which may add conversion or other fees for their services. The issuing bank has no idea what fees the processing bank (or other non-affiliated third party) may charge for processing or converting transactions made outside the United States and would thus not be able to disclose these fees to their cardmember.

Finally, because implementation of many of the proposed rules will involve significant system development and testing, we believe the Board should allow at least an eighteen (18) month implementation period. Alternatively, we believe it would assist the credit card industry to develop rolling implementation periods wherein those revisions that will involve significant operational resources will be allowed longer implementation periods.

Thank you for allowing WFNNB the opportunity to comment on the proposed amendments to Regulation Z.

Sincerely,

Daniel T. Groomes
President